

House Bill 58 (AS PASSED HOUSE AND SENATE)

By: Representatives Powell of the 29th and Rice of the 51st

A BILL TO BE ENTITLED
AN ACT

To enact the "Working Against Recidivism Act"; to provide a short title and legislative findings; to amend Chapters 1, 5, and 10 of Title 42 of the Official Code of Georgia Annotated, relating respectively to general provisions relative to penal institutions, state and county correctional institutions, and correctional industries, so as to authorize work programs employing inmates as voluntary, paid labor for privately owned profit-making employers producing goods, services, or goods and services for sale to public or private purchasers under certain circumstances; to provide for rules and regulations; to make such rules and regulations subject to Code Section 50-13-4, relating to procedural requirements for rules and legislative override; to provide for federal certification and state operation of such programs; to provide for compensation for state costs and use of state resources; to provide for compliance with federal law; to provide for determinations by the Georgia Department of Labor as to whether inmates would be displacing other workers, whether labor shortages exist, and the prevailing local wage for work to be done by inmates; to authorize the Georgia Correctional Industries Administration to use inmate labor to provide services; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "Working Against Recidivism Act."

SECTION 2.

The General Assembly finds and declares that:

(1) Many persons sentenced to confinement for criminal offenses commit additional criminal offenses after release from confinement, and such recidivism is a serious danger to public safety and a major source of expense to the state;

(2) Under the appropriate conditions and limitations, work programs of voluntary labor by inmates of state and county correctional institutions for privately owned profit-making employers to produce goods, services, or goods and services for sale to public or private purchasers provide substantial public benefits by:

(A) Providing job experience and skills to participating inmates;

(B) Allowing participating inmates to accumulate savings available for their use when released from the correctional institution;

(C) Lowering recidivism rates;

(D) Generating taxes from inmate income;

(E) Reducing the cost of incarceration by enabling participating inmates to pay room and board; and

(F) Providing participating inmates income to pay fines, restitution, and family support;

(3) Appropriate conditions and limitations for voluntary labor by inmates for such work programs include but are not limited to:

(A) Assurance that inmates' work is voluntary;

(B) Payment of inmates at wages at a rate not less than that paid for work of a similar nature in the locality in which the work is to be performed;

(C) Provision of federal and state governmental benefits to participating inmates comparable to governmental benefits provided for similarly situated private sector workers;

(D) Selection of participating inmates with careful attention to security issues;

(E) Appropriate supervision of inmates during travel or employment outside the correctional institution;

(F) Assurance that inmate labor will not result in the displacement of employed workers; be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality; or impair existing contracts for services;

(G) Consultations with local private employers that may be economically impacted; and

(H) Consultations with local labor union organizations and other local employee groups, especially those who have an interest in the trade or skill to be performed by the inmates; and

(4) Requirements for the federal Prison Industry Enhancement Certification Program authorized by 18 U.S.C. Section 1761 and federal regulations are sufficient to ensure appropriate conditions and limitations in many areas of concern for programs of voluntary labor by inmates for privately owned profit-making employers to produce goods, services, or goods and services for sale to public and private purchasers.

SECTION 3.

Chapter 1 of Title 42 of the Official Code of Georgia Annotated, relating to general provisions relative to penal institutions, is amended in Code Section 42-1-5, relating to use of inmates for private gain, by striking in its entirety subsection (d) and inserting in its place the following:

"(d) This Code section shall not apply to:

(1) Work on private property because of natural disasters;

(1.1) Work on private property as a form of victim compensation in accordance with Chapter 15A of Title 17;

(2) Work or other programs or releases which have the prior approval of the board or commissioner of corrections;

(3) Community service work programs; ~~or~~

(4) Work-release programs; or

(5) Work programs authorized by Article 6 of Chapter 5 of this title."

SECTION 4.

Chapter 5 of Title 42 of the Official Code of Georgia Annotated, relating to state and county correctional institutions, is amended by inserting a new article to be designated Article 6 to read as follows:

"ARTICLE 6

42-5-120.

(a) The board is authorized to issue and promulgate rules and regulations for programs of voluntary labor by inmates for privately owned profit-making employers to produce goods, services, or goods and services for sale to public and private purchasers. Such rules and regulations shall be designed to meet the published requirements of the Prison Industry Enhancement Certification Program authorized by 18 U.S.C. Section 1761 and federal regulations and to provide other appropriate conditions and limitations. Such rules and regulations may provide for administration and management of such work programs by the department.

(b) The rules and regulations for the work programs authorized by this article shall include but not be limited to rules requiring:

(1) Assurance that inmates' work is voluntary and that there shall be no retribution against inmates who do not volunteer;

(2) Payment of inmates at wages at a rate not less than that paid for work of a similar nature in the locality in which the work is to be performed;

1 (3) Provision of federal and state governmental benefits to participating inmates
2 comparable to governmental benefits provided for similarly situated private sector
3 employees;

4 (4) Selection of participating inmates with careful attention to security issues;

5 (5) Appropriate supervision of inmates during travel and employment outside the
6 correctional institution;

7 (6) Assurance that inmate labor will not result in the displacement of employed workers;
8 be applied in skills, crafts, or trades in which there is a surplus of available gainful labor
9 in the locality; or impair existing contracts for services;

10 (7) Consultations with local private businesses that may be economically impacted;

11 (8) Consultations with local labor union organizations and other local employee groups,
12 especially those who have an interest in the trade or skill to be performed by the inmates;
13 and

14 (9) Procedures for deductions from inmate wages for federal, state, and local taxes;
15 reasonable charges for room and board; court-ordered child support and voluntary family
16 support; and payments to the Georgia Crime Victims Emergency Fund of not less than
17 5 percent nor greater than 20 percent of gross wages, in compliance with Prison Industry
18 Enhancement Certification Program requirements.

19 (b.1) Regulations relating to paragraphs (2) and (6) of subsection (b) of this Code section
20 and relating to whether labor shortages exist shall be promulgated and issued jointly by the
21 board and the Commissioner of Labor.

22 (c) Notwithstanding the provision of Code Section 50-13-2 exempting the Board of
23 Corrections from the definition of the term 'agency' and thus from the provisions of Chapter
24 13 of Title 50, the 'Georgia Administrative Procedure Act,' the rules and regulations
25 promulgated in accordance with this Code section shall be subject to the provisions of Code
26 Section 50-13-4, relating to procedural requirements for the adoption, amendment, or
27 repeal of rules; the limitation on an action to contest rules; and legislative override of rules
28 to which the members of the General Assembly object.

29 42-5-121.

30 The commissioner shall seek certification under the federal Prison Industry Enhancement
31 Certification Program authorized by 18 U.S.C. Section 1761 and federal regulations for
32 programs of voluntary labor by inmates for privately owned profit-making employers to
33 produce goods, services, or goods and services for sale to public or private purchasers.
34 After receiving certification, the board shall operate one or more such programs.

1 42-5-122.

2 Any program for voluntary labor by inmates created in accordance with this article shall
3 not be subject to the provisions of Code Section 42-5-60 prohibiting hiring out inmates to
4 private persons, corporations, and businesses conducted for profit; prohibiting sale of
5 goods, wares, or merchandise manufactured, produced, or mined by inmates to private
6 persons, firms, associations, and corporations; and limiting the amount of compensation
7 for inmates.

8 42-5-123.

9 The board shall ensure by rules or by contractual provisions that the privately owned
10 profit-making employers compensate the department and the Georgia Correctional
11 Industries Administration for any administrative costs or other costs incurred by the
12 department or the administration for the operation of the program or programs. The board
13 shall ensure by rules or by contractual provisions that the department and the
14 administration are compensated for use of any employees of the department or the
15 administration, use of any space owned by or under the control of the department or the
16 administration, or use of any other resources of the department or the administration in the
17 operation of the program or programs.

18 42-5-124.

19 Following the issuance and promulgation of rules and regulations, the department is
20 authorized to publicize the program and invite employers to participate. The department
21 shall rely upon the Georgia Department of Labor for determining whether inmates would
22 be displacing other workers, whether labor shortages exist, and the prevailing local wage
23 for work to be done by inmates. The Georgia Department of Labor is authorized to provide
24 such determinations to the department.

25 42-5-125.

26 (a) Every program involving employment of an inmate, convict, or prisoner by a business
27 operated for profit to manufacture, produce, or mine goods, wares, or merchandise for
28 transportation in interstate commerce or to provide services shall become a part of the
29 programs authorized by this article and shall conform to the rules and regulations
30 promulgated in accordance with this article.

31 (b) This Code section shall not apply to programs for the production of agricultural
32 commodities, parts for the repair of farm machinery, or goods, wares, or merchandise
33 manufactured for use by not for profit organizations, the federal government, the District
34 of Columbia, or by any state or political subdivision of a state.

(c) This Code section shall not apply to an inmate, convict, or prisoner serving a term of supervised release, as described in 18 U.S.C. Section 3583."

SECTION 5.

Chapter 10 of Title 42 of the Official Code of Georgia Annotated, relating to correctional industries, is amended by striking paragraphs (4) and (5) of Code Section 42-10-4, relating to the powers of the Georgia Correctional Industries Administration, and inserting in lieu thereof the following:

"(4) To have the same powers and authority possessed by the Department of Corrections in connection with the manufacture and sale of products and provision of services;

(5) To utilize any and all inmates who may be made available for its corporate purposes by the Department of Corrections. The administration shall not be required to make any payment to the Department of Corrections for the use of such labor and shall not compensate inmates employed in any industry or performing services at any correctional institution, except as otherwise provided by Article 6 of Chapter 5 of this title;"

SECTION 6.

This Act shall become effective on July 1, 2005.

SECTION 7.

All laws and parts of laws in conflict with this Act are repealed.